IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 15487 of 2004

Between:

The Sirpur Paper Mills Limited, Sirpur-Kaghaznagar, Adilabad District,
Rep. by D. Durga Prasad, Assistant Liaisoning Officer, Aged 40 Years, R/o. Hyderabad.

..... PETITIONER

AND

1 The Superintendent of Central Excise, Sirpur- Kaghaznagar Range, Sirpur-Kaghaznagar, Adilabad District.
2 The Assistanct Commissioner of Customs and Central Excise, Nizamabad

Division,Godown Road, Nizamabad.
3 The Commissioner of Customs and Central Excise, Hyderabad-I

Commissionerate,Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction of Directions declaring the action of the 1st Respondent in seizing the godown of the Petitioner on 26-8-2004 towards the recovery of the amount of Duty and penalty in respect of which Appeals along with Stay Applications are pending before the Appellate Forum as Stay Applications are pending before the Appellate Forum as illegal, unconstitutional and also highhanded and to issue a consequential direction to the Respondents to act in accordance with law.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondents: MR. Bhoopal Reddy for MR. ARAJASHEKAR REDDY (SC FOR CG)

The Court at the admission stage, made the following :

ORDER : (per Hon'ble Sri Bilal Nazki, J)

Heard learned Counsel for the parties. Counter has been filed. Mr.Bhoopal Reddy appears for Mr.Rajasekhar Reddy, Standing Counsel for the Central Government. Parties have no objection if the matter is disposed of at this stage.

Short controversy in this Writ Petition is that there are five matters, in which five appeals have been filed by the petitioner. Along with the appeals, stay applications have been filed, which have not been disposed of although the arguments have been heard on 09.09.2004. In the meantime, respondents started coercive proceedings against the petitioner for recovery of the dues. In the counter affidavit, these facts have not been denied. It has also not been denied that there is a Circular issued by the Board on 02.06.1998, wherein it has been laid down that coercive measures should not be taken for recovery if stay applications are pending. But it has been stated that the Circular lays down that coercive measures should not be taken for a period of one month from the date of filing of stay applications. Since one month has expired, therefore the respondents were within their rights to make recoveries.

We feel that since stay applications are pending and the arguments have already been heard, respondents should have waited for the outcome of the stay applications. In these circumstances, we direct that there shall be stay of recovery and respondents shall not take any coercive measures against the

petitioner till the stay applications are decided by the authority concerned.

Writ Petition is accordingly disposed of. No costs.

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(BILAL NAZKI, J)

29th September, 2004.

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(S.ANANDA REDDY, J)

ajr

To

1 The Superintendent of Central Excise, Sirpur- Kaghaznagar Range, Sirpur-Kaghaznagar, Adilabad District.
2 The Assistanct Commissioner of Customs and Central Excise, Nizamabad

Division,Godown Road, Nizamabad.
3 The Commissioner of Customs and Central Excise, Hyderabad-I

Commissionerate,Basheerbagh, Hyderabad.

4 Two C.D. copies.